IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2704 OF 2006

Press Trust of India Employees Union
& anr. ..Petitioners.

Vs.

Press Trust of India Limited & anr. ..Respondents.

...

Ms. Jane Cox for the Petitioners.
Mr. J.P. Cama, Senior Advocate with Mr. B.K. Ashok for the Respondents.

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CORAM: DR. D.Y. CHANDRACHUD, J.
18th October, 2006.

ORAL JUDGMENT :

1. These proceedings are directed against an order passed by the Industrial Court on 7th September, 2006 upon two revision applications, one by the employer and the second by the workman against an order passed by the Labour Court on a complaint of unfair labour practice. The Industrial Court has affirmed the finding of the Labour Court to the effect that the enquiry was fair and proper and that the finding of misconduct in the disciplinary enquiry was not perverse. The Industrial Court while allowing the revision application of the employer came to the

conclusion that the Labour Court was in error in holding that the punishment of dismissal was disproportionate to the charge of misconduct that was proved. The punishment of discharge has consequently been affirmed.

2. The workman in the present case who is the Second Petitioner before the Court was a Senior Correspondent employed since 1986 with the Press Trust of India. On 3rd November, 1998 a communication was issued to him by the editor requiring the Second Petitioner to proceed to Jaipur to cover "the State Assembly Elections and subsequent political developments". The Second Petitioner was directed to reach Jaipur by 8th November, 1998. The workman responded by a letter dated 7th November, 1998 claiming that the communication issued by the editor was "unprecedented, unnecessary, motivated and malafide". The workman here was employed in a section of the First Respondent called PTI Bhasha and it was his case that right since the inception, no reporter has been placed on an assignment outside the State of Maharashtra for covering the elections. According to

the workman there was a Senior Correspondent based in Jaipur, equally capable of performing the task. The contention of the Second Petitioner was that he was the President of the PTI Employees' Union for Western India and that he was being sent to Jaipur for an unspecified period for motivated reasons. In these circumstances, he sought a reconsideration of the decision. On 11th November, 1998 the Regional Manager of the First Respondent responded to the representation submitted by the Second Petitioner, stating that PTI is an all India organisation with more than 80 offices and in the course of their duties, the employees – both journalists as well as non- journalists, are required to go to different places often at short notice. The letter recorded that journalists all over the world are given assignments thousands of miles away from their base which is inherent in the nature of their job. The Regional Manager called upon the Second Petitioner to report at Jaipur within 72 hours. The workman was informed that he had delayed the work of the management and any further delay could not be tolerated. The Second Petitioner responded by his letter dated 13th November,

1998 reiterating the contents of his earlier letter dated 7th November, 1998. According to the Second Petitioner the decision to send him to Jaipur was not prompted by any genuine editorial considerations. According to the Second Petitioner "editorial freedom cannot be used as a front for attaining collateral ends" and that the decision of the editor was malafide and arbitrary.

3. A disciplinary enquiry was initiated on 21st November, 1998. A charge sheet was thereafter issued on 1st December, 1998 on the allegation that there was a willful refusal to obey lawful orders of superior officers. The Second Petitioner participated in the disciplinary enquiry and the charge of misconduct was held to be proved. The disciplinary authority considered the representation submitted by the Petitioner while imposing an order of punishment on 1st November, 2001. While recording that the past record of the workman had no adverse remarks over a period of 14 years and that he was given a merit based increment on 1st March, 1998, the authority was of the view that his conduct of repeated and flagrant disobedience of the lawful

orders of his superiors and his defiant attitude could not be countenanced since it had diminished the discipline in the office and affected the authority of the superiors. The authority held that while it had decided to terminate the services of the Second Petitioner; “However, in light of your past clean record, I have decided to reduce the penalty from dismissal to discharge with one month's pay”. The Second Petitioner was accordingly discharged from service with effect from 7th November, 2001.

4. The Labour Court came to the conclusion that (i) the enquiry was fair and proper and (ii) the finding of misconduct was not perverse. The Labour Court, however, came to the conclusion that the punishment of discharge that was imposed by the employer was disproportionate to the proved misconduct. The Labour Court accordingly set aside the order of discharge and directed reinstatement of the workman without backwages, though with continuity of service. Both the employer and the workman carried the matter in revision. The Industrial Court in the exercise of its revisional jurisdiction affirmed the finding of the Labour Court

that the enquiry was fair and proper and that there was no perversity in the finding of misconduct. The Industrial Court, however, held that the Labour Court was manifestly in error in interfering with the punishment of discharge. The revision application filed by the employer was accordingly allowed and the complaint of unfair labour practice as a consequence was dismissed.

5. The first submission that has been urged on behalf of the Petitioners is that both the Labour Court and the Industrial Court committed an error apparent in holding that the finding of misconduct that was arrived at in the disciplinary proceeding was not perverse. Counsel appearing for the Petitioners has urged that upon being assigned to report at Jaipur to cover the assembly elections, the Second Petitioner had merely sought reconsideration of the order. It was submitted that both the first letter dated 7th November, 1998 and the second letter dated 13th November, 1998 addressed by the Second Petitioner amounted to no more than a request for reconsideration. It was urged that on 14th November,

1998 the daughter of the Second Petitioner had to be hospitalized and thereupon he was granted privilege leave for attending to her.

6. While considering the submission, it would be necessary for the Court to place in perspective the parameters of the jurisdiction of this Court under Article 226 in disciplinary matters, particularly having regard to the concurrent findings in the present case of the Labour Court and the Industrial Court. The Labour Court held on the evidence on the record that the complainant workman had by his reply made it abundantly clear that he refused to go to Jaipur to attend to news coverage in connection with the assembly elections in Rajasthan on the ground that such an assignment was unprecedented and he was working at Mumbai. The Labour Court held that when the complainant workman was directed to positively reach Jaipur within 72 hours by the management's letter dated 11th November, 1998, there was no room for him to state that he stood by his previous letter dated 7th November, 1998. The Labour Court held that the workman ought to have left Jaipur immediately and that the ailment of his daughter

which was a subsequent event had no relevance to the misconduct which was already committed. The Industrial Court in revision also noted that the workman had on 7th November, 1998 and subsequently on 13th November, 1998 refused to go to Jaipur. The subsequent sanction of leave to him on 14th November, 1998 to attend to his daughter's ailment was not of relevance since much prior thereto the complainant workman had declined to accept a lawful order assigning him duties at Jaipur.

7. It is not possible for this Court to come to the conclusion that the findings that have been arrived at by the Labour Court and by the Industrial Court on the question of misconduct are perverse or that there is any error apparent on the face of the record as to warrant the exercise of the jurisdiction under Article 226. The submission urged on behalf of the Petitioners that the letter dated 7th November, 1998 addressed by the Second Petitioner and the subsequent letter dated 13th November, 1998 amounted to no more than a request for reconsideration cannot be accepted. Even if the letter dated 7th November, 1998 was to be regarded as a

representation submitted by the workman against an order calling upon him to carry out news coverage at Jaipur, it is clear from the record that the management by its letter dated 11th November, 1998 rejected the representation and called upon the workman to report at Jaipur within 72 hours. The workman's response on 13th November, 1998 was a response of defiance by which he questioned the authority of the editor to assign him such duties. In these circumstances, if the management regarded that the act of the workman amounted to a breach of a lawful order issued by a superior, no fault can be found in the convening of a disciplinary proceeding and in the finding of misconduct that was arrived at therein. The Second Petitioner as a journalist could not possibly have asserted that he was not subject to a lawful order requiring him to report for the Press Trust of India on the coverage of the elections which were to be held in Rajasthan. As a workman, even though he was a President of the Union at the material time, the Second Petitioner could not be immune from carrying out the duties of a journalist that were cast upon him and for which he was engaged, nor could it possibly be urged by him that the work

could be done by some other person. That was a matter which constituted a prerogative of the management. In refusing to accept the order of assignment, the Second Petitioner was in breach of a lawful order of a superior. The finding of misconduct therefore cannot be faulted.

8. In several recent judgments of the Supreme Court, the importance of maintaining discipline in the work place has been emphasized. In **Hombe Gowda Edn. Trust v. State of Karnataka**[1] the Supreme Court cautioned against placing an interpretation on labour legislation which would have the consequence of allowing employees to break discipline with impunity. The Court noted that the recent trend in the decisions of the Supreme Court was to strike a balance between the rights of the employer and those of the workmen, so as to foster growth and development. The same view was reiterated in a subsequent decision in **L.K. Verma v. H. M. T. Ltd.**[2]**.** In my view, the finding of misconduct has correctly been held to be established both by the Labour Court and by the

1 2005(10) SCALE 307.
2 2006 I CLR 854.

Industrial Court. No interference under Article 226 of the Constitution is warranted.

9. The second submission that has been urged is that the punishment of discharge that was imposed by the disciplinary authority is not an enumerated punishment in the Standing orders. The certified standing orders applicable to the workmen - journalists of the Press Trust of India inter alia provide that a working journalist who is guilty of misconduct may be subjected to the following punishments viz.

"(a) warned or censured, or

(b) fined subject to and in accordance with the provisions of the Payment of Wages Act, 1936 or

(c) suspended by an order in writing signed by General Manager for a period not exceeding 7 days, or

(d) dealt with, by withholding of increment or promotion (including the stoppage of increment at an efficiency bar) or reduction to lower post or time scale, or

(e) dismissed with notice."

10. The Editor in Chief and General Manager of the First

Respondent who acted as a disciplinary authority passed an order on 1st November, 2001 discharging the workman from service. The relevant part of the order passed by the disciplinary authority reads as follows :

> "As regards past record, it is true that you have served with us for 14 years and that there are no adverse remarks therein. Indeed, on the contrary, we have given you a merit increment on 01.03.1998. However, your present conduct of repeated and flagrant disobedience of the lawful orders of your superior officers and your defiant attitude throughout this period cannot be countenanced by us. It has diminished the discipline in the office and affected the authority of your superiors. As such, I have decided to terminate your services. However, in light of your past clean record, I have decided to reduce the penalty from dismissal to discharge with one month's pay."

The disciplinary authority as the order of 1st November, 2001 would show came to the conclusion that the misconduct was established. However, having regard to the fact that the past record of the workman was clean and without any adverse remarks, the disciplinary authority evidently decided to reduce the penalty of dismissal. Now it is a settled principle of law that where the certified standing orders provide for enumerated penalties, it is not open to the management to impose a penalty that is not

contemplated therein. Undoubtedly a disciplinary authority upon considering the representation of the employee against the punishment that is proposed to be imposed upon the report of the enquiry officer is entitled to impose a lesser punishment if it comes to the conclusion that such an action is warranted. However, the punishment that is imposed has to be in consonance with the standing orders which statutorily constitute a part of the terms and conditions of service. This view is consistent with the law laid down by the Supreme Court in **State Bank of India v. T. J. Paul**[3]. That case arose out of a disciplinary proceeding convened against a manager of a bank. The disciplinary authority issued a notice proposing to impose the punishment of 'dismissal without notice' against the employee. The employee submitted a reply upon which the punishment that was proposed was imposed. The appellate authority, however, modified the punishment from dismissal without notice to removal. The High Court held that the finding of major misconduct was not proved. The Supreme Court reversed the finding of the High Court. However, the Supreme Court held that the appellate authority, once it came to the

3 AIR 1999 SC1994.

conclusion that the punishment of dismissal was not warranted in the facts of the case, could not have awarded the punishment of removal which was not one of the enumerated penalties under paragraph 22(v) of the service rules. On behalf of the bank it was sought to be asserted that if the appellate authority decided not to dismiss the employee, it still had the inherent power to award a punishment of removal, which was lesser in severity. Rejecting the submission, the Supreme Court observed as follows :

> "Here, the gradation of the punishments has been fixed by the rules themselves, namely, the Rules of the Bank of Cochin and the Court is merely insisting that the authority is confined to the limits of its discretion as restricted by the Rules. Inasmuch as the Rules of the Bank of Cochin have enumerated and listed out the punishments for ' major misconduct', we are of the view that the punishment of 'removal' could not have been imposed by the appellate authority and all that was permissible for the Bank was to confine itself to one or the other punishments for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice."

The matter was thereafter remitted back to the appellate authority for reconsideration on the issue of penalty. The judgment of the Supreme Court was rendered in the context of service rules, in that

case those governing the Bank of Cochin. What has been held by the Supreme Court in the case of service rules must apply a fortiori to the certified Standing Orders framed in accordance with the Industrial Employment (Standing Orders) Act, 1946. Once standing orders have been duly certified, they constitute a statutory regulation of the terms and conditions of employment and are part of the conditions of service. Undoubtedly, it is open to a disciplinary authority to hold that the punishment of dismissal which has been proposed should be reduced having regard to the nature of the misconduct or, for that matter, the past record of the employee which in the present case by all accounts has been regarded as clean. But, equally while reducing the punishment it is not open to the disciplinary authority to impose a punishment which is not prescribed by the certified standing orders. Consequently while the discretion of the disciplinary authority to reduce the punishment cannot be doubted, the authority in doing so is governed by the discipline of the certified Standing Orders and must confine itself to one of the punishments enumerated thereunder.

11. Counsel appearing for the First Respondent sought to place reliance on a judgment of a Division Bench of this Court in **Vasant Gopal Gurav v. F.M. Lyla**[4]. That was a case where a disciplinary proceeding was held against five workers in a mill on the ground of an illegal strike and for inciting an illegal strike. The enquiry officer held that the misconduct was proved but, having regard to the past clean record imposed a punishment of discharge from service with 13 days' wages in lieu of notice. The Industrial Court held that there were no malafides nor any victimization and that under the standing orders an order of discharge could not be said to be illegal and improper. The Division Bench held that when the enquiry officer had found that both the charges were established, the manager was entitled to make an order permitted by the standing orders and those orders could not be challenged. One of the submissions that was urged before the Division Bench was that under Standing Order 22(1) the punishment envisaged was suspension not exceeding four days or dismissal without notice or compensation in lieu of notice. The standing order

4 1968 II LLJ 132.

provided that in awarding punishment the manager shall take into account the gravity of misconduct, the previous record and any other extenuating or aggravating circumstances. The Division Bench held that if the manager thought that the punishment of dismissal will be harsh, he was justified in making an order of discharge so that the workers would not be hampered in securing service at any other place. The Division Bench declined to accept that the only punishment that could be imposed was one of suspension or dismissal and held that unless there was anything which prevents the employer from imposing a lesser punishment, there is no reason why the standing order should be construed in the limited way. The judgment of the Division Bench must now be considered together with the subsequent judgment of the Supreme Court in **State Bank of India** (supra) which specifically deals with the question as to whether an employer can impose a punishment of discharge when it is not one of the enumerated punishments provided in the service rules. As noted above, what has been held by the Supreme Court in the context of service rules must apply a fortiori to certified Standing Orders which have the force of an Act

of Parliament viz. The Industrial Employment (Stranding Orders) Act, 1946.

12. In these circumstances, I am of the view that no interference is warranted by this Court in respect of the finding that the enquiry was fair and proper, (the fairness of the enquiry was not challenged in the oral submissions before this Court) nor with the finding of the Labour Court and the Industrial Court that the finding of misconduct is not perverse. However, the interference of this Court under Article 226 is warranted inasmuch as the disciplinary authority having held that the past record of the workman provided an extenuating circumstance, proceeded to impose a punishment which was not enumerated in the certified standing orders. Accordingly the proceedings shall stand remitted back to the disciplinary authority to reconsider what other punishment should be imposed on the Second Petitioner in the light of its finding that a reduction of the penalty was warranted in the light of the past clean record of the workman. The order of punishment shall accordingly stand set aside to facilitate a

determination on remand. It would be open to the Second Petitioner to submit a representation to the authority within a period of four weeks from today on the proposed punishment.

13. Counsel appearing for the Petitioners submitted that as a consequence of the order of the punishment being set aside, the Second Petitioner would be entitled to full wages for the intervening period. It is common ground before this Court that during the pendency of the proceedings before the Industrial Court the Second Petitioner was directed to be paid 60% of the wages. Counsel appearing for the First Respondent has stated before the Court that in the meantime until the disciplinary authority arrives at a fresh determination on the question of the punishment to be imposed, the First Respondent shall give to the Second Petitioner the benefit of the interim order dated 13th June, 2003 passed by the Industrial Court. This is fair and proper. The statement is accepted. The disciplinary authority shall while passing its final orders issue directions in regard to the payment of the balance of the wages, if any, that are found to be due and payable to the

Second Respondent.

The Petition is accordingly disposed of. There shall be no order as to costs.